

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS
FOR THE MINNESOTA DEPARTMENT OF COMMERCE

In the Matter of the Securities
Broker-Dealer License of J.P.
Gibbons & Co., Inc., and the
Securities Agent License of
Iosef Pak

**FINDINGS OF FACT,
CONCLUSIONS AND
RECOMMENDATION**

Administrative Law Judge Steve M. Mihalchick conducted a prehearing conference in this contested case proceeding beginning at 3:00 p.m. on Tuesday, November 21, 2000, at the Office of Administrative Hearings, 100 Washington Avenue South, Suite 1700, Minneapolis, Minnesota.

Jennifer S. Kenney, Assistant Attorney General, Suite 1200, NCL Tower, 445 Minnesota Street, St. Paul, Minnesota 55101-2130, represented the Department of Commerce. Iosef Pak did not appear at the prehearing conference, nor did anyone appear on his behalf. No one appeared on behalf of J.P. Gibbons & Co., Inc., and no one indicated that the corporation was being represented in this matter. The record closed on November 21, 2000, when the prehearing conference ended.

NOTICE

This Report is a recommendation, not a final decision. The Commissioner of the Minnesota Department of Commerce will make the final decision after reviewing the hearing record. The Commissioner may adopt, reject or modify these Findings of Fact, Conclusions, and Recommendations. Under Minnesota law¹, the Commissioner may not make his final decision until after the parties have had access to this Report for at least ten days. During that time, the Commissioner must give each party adversely affected by this Report an opportunity to file objections to the report and to present argument. Parties should contact the office of James C. Bernstein, Commissioner, Department of Commerce, 133 East Seventh Street, St. Paul, Minnesota 55155, to find out how to file objections or present argument.

¹ Minn. Stat. § 14.61 (2000). (Unless otherwise specified, all references to Minnesota Statutes are to the 2000 edition.)

STATEMENT OF THE ISSUE

Whether the Commissioner of Commerce should revoke the Securities Broker-Dealer License of J.P. Gibbons & Co., Inc., and the Securities Agent License of Iosef Pak and assess a civil penalty against them for violating Minnesota's licensing statutes and rules governing securities broker-dealers and security agents.

Based upon the record in this matter, the Administrative Law Judge makes the following:

FINDINGS OF FACT

1. On October 18, 2000, the Department initiated this contested case proceeding by serving J.P. Gibbons & Co., Inc., and Iosef Pak with the Notice of and Order for Hearing and Prehearing Conference (Notice of Hearing) by certified U. S. Mail directed to the last known addresses for each Respondent. The last known address for J.P. Gibbons & Co., Inc., is Alberto John Aviles, Chief Compliance, 711 Third Avenue, 18th Floor, New York, NY 10017. The last known address for Iosef Pak is 13 Sussex Court, Unit 312, Suffern, NY 10901. The Notice of Hearing served on Iosef Pak was returned as undeliverable. On November 15, 2000, the Department again served the Notice of Hearing on Iosef Pak by certified mail at his last known address and by delivery of a copy of the Notice to the Commissioner of Commerce in accordance with Minn. Stat. § 45.028.

2. The Notice of Hearing scheduled a prehearing conference in this contested case proceeding beginning at 3:00 p.m. on Tuesday, November 21, 2000.

3. The Notice of Hearing contained the following statements:

If Respondents fail to attend or otherwise appear at any prehearing conference, or settlement conference, or the hearing in this matter without prior consent of the judge or fails to comply with any interlocutory order of the judge after having been served with a copy of this Order, Respondents shall be deemed to be in default and the allegations herein may be deemed proved and Respondents' securities broker-dealer and securities agent licenses may be revoked or suspended, or Respondents censured, and/or a civil penalty may be imposed against Respondents without further proceedings. (Emphasis in original.)

A PARTY INTENDING TO APPEAR AT THE PREHEARING CONFERENCE MUST FILE THE ENCLOSED NOTICE OF APPEARANCE WITH THE ABOVE-NAMED ADMINISTRATIVE LAW JUDGE WITHIN TWENTY (20) DAYS OF THE DATE OF SERVICE OF THIS ORDER. A COPY OF THE NOTICE OF APPEARANCE MUST

ALSO BE SERVED WITHIN TWENTY (20) DAYS OF THE DATE OF SERVICE OF THIS ORDER UPON ASSISTANT ATTORNEY GENERAL JENNIFER S. KENNEY, 1200 NCL TOWER, 445 MINNESOTA STREET, ST. PAUL, MINNESOTA 55101-2130. [Emphasis in original.]

5. Neither Respondent has filed a Notice of Appearance, as the Notice of Hearing instructed them to do. Furthermore, neither Respondent appeared at the November 21, 2000, prehearing conference, nor did either make a prehearing request to the Administrative Law Judge to be excused from appearing at that conference or to have the conference rescheduled for a later date.

6. Due to their failure to appear, Respondents are in default in this matter and the facts alleged in the Notice of Hearing are taken as true, and the Administrative Law Judge incorporates those facts into these Findings by reference.

7. The Administrative Law Judge adopts as Findings any Conclusions that are more appropriately described as Findings.

Based upon these Findings of Fact, the Administrative Law Judge makes the following:

CONCLUSIONS

1. Minnesota law² gives the Administrative Law Judge and the Commissioner of Commerce authority to conduct this proceeding, to consider the issues raised here, and to make findings, conclusions, and orders.

2. The Department has complied with all of Minnesota law's substantive and procedural requirements.

3. The Department gave Respondents proper and timely notice of the prehearing conference that was scheduled in this proceeding.

4. Under the rules of the Office of Administrative Hearings,³ Respondents are in default because they failed to appear at the scheduled prehearing conference without being excused by the Administrative Law Judge.

5. Under Minn. Rule 1400.6000, when a party defaults, an administrative law judge may take the facts alleged in the Notice of Hearing as true and no longer in dispute.

² Minnesota Statutes, section 14.50, section 45.027, subdivisions 6, 7, and 11, and section 80A.07, subd. 1(b)(10).

³ Minnesota Rules, part 1400.6000 (1999). (Unless otherwise specified, all references to Minnesota Rules are to the 1999 edition.)

6. Based upon the facts alleged in the Notice of and Order for Prehearing Conference and Hearing, which the Administrative Law Judge has taken as true, J.P. Gibbons & Co., Inc., has violated the securities broker-dealer licensing statutes and rules and Iosef Pak has violated the securities agent licensing statutes and rules.⁴ The law therefore allows the Commissioner to take disciplinary action against them and to assess civil penalties against them.

7. Revoking the Securities Broker-Dealer License of J.P. Gibbons & Co., Inc., and the Securities Agent License of Iosef Pak and assessing a civil penalty against them would be in the public interest.

8. The Administrative Law Judge adopts as Conclusions any Findings which are more appropriately described as Conclusions.

Based upon these Conclusions, the Administrative Law Judge makes the following:

RECOMMENDATION

The Administrative Law Judge recommends that the Commissioner revoke the Securities Broker-Dealer License of J.P. Gibbons & Co., Inc., and the Securities Agent License of Iosef Pak and assess civil penalties against them.

Dated this 5th day of December 2000.

STEVE M. MIHALCHICK
Administrative Law Judge

NOTICE

Under Minnesota law,⁵ the Commissioner must serve his final decision upon each party and the Administrative Law Judge by first-class mail.

⁴ Minnesota Statutes, section 45.027, subdivision 1a, and section 80A.07, subd. 1(b)(7); section 80A.07, subd. 1(b)(10); Minnesota Rules, part 2875.0910, subp. 1.

⁵ Minnesota Statutes, section 14.62, subdivision 1.

